

# memorandum

DATE: February 2, 2007

REPLY TO:

ATTN OF: IG-40

SUBJECT: Letter Report on "Alleged Loss or Theft of Personally Identifiable Information at Pantex,"  
INS-L-07-05 (S06IS037)

TO: Manager, Pantex Site Office

This is to advise you of the results of an Office of Inspector General (OIG) inspection of an alleged loss or theft of personally identifiable information at the National Nuclear Security Administration's (NNSA's) Pantex Plant.

## BACKGROUND

Under the Immigration Reform and Control Act of 1986, as amended by the Immigration and Nationality Act, all United States (U.S.) employers are required to obtain and retain information concerning each employee's eligibility to work in the U.S. The information to be collected generally consists of the employee's social security number, address, date of birth, and other personally identifiable information sufficient to make an eligibility determination. At the time of employment, the information is to be recorded on Form I-9, Employment Eligibility Verification. Federal law requires that these forms be retained for three years after the date of hire or one year after the employment is terminated, whichever is later. Failure to comply with Federal Law requirements associated with I-9 forms may result in civil penalties against the employer.

On May 5, 2006, U.S. Immigration and Customs Enforcement (ICE), a branch of the Department of Homeland Security, issued a letter to BWXT Pantex, the management and operating contractor at the Pantex Plant, requiring the production of original I-9 forms for "all current and non-current employees [at the Pantex Plant] for the past 18 months." On May 30, 2006, the OIG received an allegation that BWXT sent over 400 employees home to retrieve copies of personal identification such as birth certificates, driver's licenses, and social security cards because it was discovered that parts of their employment records were "either lost or stolen." The complainant identified the missing records as the employees' I-9 forms and expressed concern the missing personal information could result in identity theft or the creation of false documentation to gain unauthorized access into the Pantex Plant. The complainant alleged that these records may have been missing since 2004 and that none of the individuals affected had been notified of the loss of his/her personal information.

The OIG initiated this inspection to determine whether: (1) I-9 forms containing personally identifiable information were lost or stolen; and (2) BWXT Pantex had adequate internal controls for the management and retention of I-9 forms.

## RESULTS OF INSPECTION

We could not reach a definitive conclusion regarding whether I-9 forms were lost or stolen from Pantex. We were able to conclude that the site had significant internal control weaknesses in the management and retention of I-9 forms. We determined that in May 2006 BWXT could not locate 442 I-9 forms that should have been on file for current and terminated employees hired between November 1986 and April 2006. There is evidence indicating that BWXT's inability to locate the I-9 forms may have been, at least in part, due to three factors: the possible premature destruction of files; a misunderstanding of record retention requirements; and the possible failure of BWXT to verify employment eligibility for employees who transferred to Pantex from other sites.

After the May 5, 2006, ICE request for I-9 forms, BWXT identified that I-9 forms were not on file for 442 employees. It was BWXT's practice to store I-9 forms in binders kept in cabinets in the human resources office. Routine access to the office was generally limited to individuals working for human resources. There is some evidence that forms may have been destroyed prematurely through shredding or other means. BWXT management told us that "red badge" (uncleared) employees working in the Employment Office occasionally were used to shred documents. A BWXT employee told us that she remembered seeing a red badge employee shredding I-9 forms. We identified this red badge employee and interviewed her regarding the matter. She said that she worked at the site between April and August 2002 and that it was possible that she shredded official documents. She remembered being told to shred some documents, and she also said that she placed other documents into boxes to be stored or destroyed by other means. However, she could not specifically recall whether any of these documents were I-9 forms. We determined that 407 of the 442 involved employees were hired prior to August 2002, so if I-9 forms had been created for these individuals, they potentially could have been disposed of by the red badge employee.

Regarding record retention requirements, BWXT's Records Inventory and Disposition Schedule (RIDS) did not correctly state the legal requirements for retaining I-9 forms. Specifically, a February 2000 RIDS stated "Destroy 3 years after [termination] of employee." The disposition instructions were changed in October 2003 to state "Destroy when 3 yrs. old." Neither was consistent with the requirement to retain the forms for three years after the date of hire or one year after the employment is terminated, whichever is later. The February 2000 instructions, if followed, should not have resulted in the premature destruction of I-9 forms; however, the October 2003 instructions, if followed, could have resulted in the premature destruction of records.

Regarding BWXT's possible failure to verify employment eligibility for employees who transferred in from other sites, we were told that the BWXT Human Resources Department may have failed to obtain I-9 information from some employees because responsible personnel may have mistakenly believed that the information did not need to be collected from employees holding "Q" clearances who were hired from other DOE sites. Information provided by BWXT reflects that 11 of the 442 employees whose I-9's could not be located were hired from other DOE sites.

It should be noted that, at the time we initiated our inspection, BWXT had opened its own investigation to determine the cause of the missing I-9 forms. This investigation concluded that “a high probability exists that the Company prematurely destroyed I-9 documents and failed to collect the information in some instances.” The BWXT investigation found that there was a general misunderstanding as to when the documents could be destroyed and that BWXT failed to obtain I-9 information from employees entering the Pantex workforce from other DOE sites.

According to the BWXT Investigation Report, BWXT held meetings to discuss the I-9 matter and developed a remedial action plan to ensure that future employment eligibility documents are collected, verified, and retained in accordance with Federal law. A “legal hold” was placed on all I-9’s, prohibiting the disposal of any I-9 documentation, and a desktop procedures document was issued that addressed processing of I-9 forms. This procedure stated that these forms were to be disposed of in accordance with Federal Law and RIDS, and we were told that BWXT modified the RIDS to conform to the record retention requirements of the Federal Law. The Investigation Report also stated that ICE is still reviewing BWXT’s I-9 documents and that BWXT anticipates it will take several months for the agency to reach its conclusions and impose any civil penalties.

While it appears that a lack of strict adherence to Federal law for the collection and retention of I-9 forms contributed to the inability of BWXT Pantex to locate the 442 I-9 forms that should have been on file for current and terminated employees, our inspection could not preclude the possibility that some I-9 forms were either lost or stolen. At this point in time, however, we do not have knowledge of any individual’s personally identifiable information being compromised.

### RECOMMENDATIONS

Based on the results of our inspection, we recommend that the Manager, Pantex Site Office, ensures that:

1. BWXT appropriately obtains citizenship information and documents it on I-9 forms.
2. BWXT has adequate physical storage and access control policies and procedures for employees’ I-9 forms to ensure they are appropriately safeguarded.
3. Individual employees are notified if there is a possibility that their I-9 forms were lost or stolen.
4. BWXT complies with the Federal law I-9 record retention requirements.

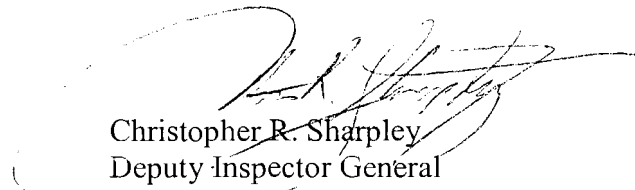
In addition, we believe that any fines levied by ICE should be reviewed for allowability. Therefore we recommend that the Manager, Pantex Site Office:

5. Ensures the contracting officer makes an allowability determination if ICE imposes any civil penalties on BWXT.

## MANAGEMENT REACTION

In comments on a draft of this report, NNSA indicated that actions are being taken to address our recommendations. NNSA's comments are included in their entirety as an appendix to this report. We found management's comments to be responsive to our recommendations. All the recommendations are open and need to be tracked in the Departmental Audit Report Tracking System.

This inspection was conducted in accordance with the "Quality Standards for Inspections" issued by the President's Council on Integrity and Efficiency. If you have any questions concerning this matter, please contact me at (202) 586-4109.



Christopher R. Sharpley  
Deputy Inspector General  
for Investigations and Inspections

cc: Deputy Secretary  
Administrator, National Nuclear Security Administration  
Chief of Staff  
Chief Information Officer  
Chief Health, Safety and Security Officer  
Director, Policy and Internal Controls Management (NA-66)  
Director, Office of Internal Review (CF-1.2)

# Appendix

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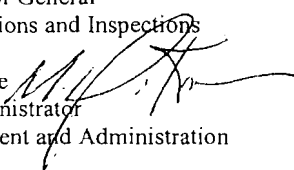


Department of Energy  
National Nuclear Security Administration  
Washington, DC 20585



January 29, 2007

MEMORANDUM FOR Christopher R. Sharpley  
Deputy Inspector General  
for Investigations and Inspections

FROM: Michael C. Kane   
Associate Administrator  
for Management and Administration

SUBJECT: Comments to IG Draft Letter Report on  
Pantex's Loss of Personal Identifying  
Information; S06IS037/2006-31389

The National Nuclear Security Administration (NNSA) appreciates the opportunity to review the Inspector General's (IG) draft report, "Alleged Loss or Theft of Personal Identifying Information at Pantex." We understand that this is a draft allegation based inspection report based on an allegation that BWXT Pantex had lost some "forms" that contained personal information. NNSA is serious about protecting the personal information of its employees, and management will continue working with our sites to improve accounting procedures.

We thank the IG for their work and also understand that while there is no indication the forms were lost or stolen, the IG did conclude that there are weaknesses in the management and retention of the forms. It is based on that conclusion that recommendations have been made and we provide the following specific comments.

- Regarding obtaining citizenship information – The Site Office is working with the Contractor to ensure that the appropriate changes to the practices and procedures are made.
- Regarding having adequate physical storage and access control policies and procedures – The Site Office is working with the Contractor on changing the existing policies and procedures in order to preclude any further events of this type.
- Regarding employee notification – while we agree with the recommendation and will ensure employees are notified, we do not have evidence that the subject forms were lost or stolen. Equally, none of the identified employees have provided any indication of identity theft or any other issues that might arise from the forms being stolen or lost.



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- Regarding the record retention requirement – The Site Office, appropriately, has presented the problem of the differences between the Department's Administrative Schedule and the General Record Schedule, which is published by the National Records and Archives Administration, to the NNSA Chief Information Officer for reconciliation and guidance.
- Regarding cost allowability determination – Should ICE (Immigration and Customs Enforcement) impose any civil penalties on the Contractor, the Contracting Officer will conduct an allowability of cost review and will make a cost determination.

Should you have any questions about this response, please contact Richard Speidel, Director, Policy and Internal Controls Management.

cc:     Manager, Pantex Site Office  
         Senior Procurement Executive  
         Director, Service Center